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July 20, 2001

By Hand Delivery

Magalie R. Salas, Esq.
Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, DC 20554

Re: CC Docket No. 00-251, *In the Matter of Petition of AT&T Communications of Virginia, Inc., TCG Virginia, Inc., ACC National Telecom Corp., MediaOne of Virginia and MediaOne Telecommunications of Virginia, Inc. for Arbitration of an Interconnection Agreement With Verizon Virginia, Inc. Pursuant to Section 252(e)(5) of the Telecommunications Act of 1996*

Dear Ms. Salas:

This is in reply to Verizon's July 13th letter, in which it asserts that the resale discount and reciprocal compensation rates are unresolved issues that should be addressed by the Commission since they have properly been raised in this arbitration. Verizon studiously avoids answering the question that the Commission actually asked: "where [Verizon] raised these issues in its Answer." FCC July 11 letter, page 2. The reason for Verizon's evasiveness is obvious: Verizon's Answer did not raise the issue at all. Nor did AT&T raise these issues anywhere in its Petition.

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The Act expressly requires that the Commission limit its consideration of any arbitration petition only to those issues that have been set forth in the petition or in any response thereto. Section 252(b)(4)(A). Since neither of these matters was raised as an unresolved issue, either in AT&T's petition or in Verizon's answer, these issues are not properly before the Commission and should not be addressed in this proceeding

I. AT&T Did Not Include Recalculation Of The Resale Discount Level As An Issue To Be Arbitrated.

AT&T's position on this issue was made clear in its Arbitration Petition. Specifically, as discussed on page 151 of AT&T's Petition, Verizon is obligated to provide advanced services via resale in accordance with the Commission's Advanced Services Resale Order and § 251(c)(4):

[W]e conclude that advanced services sold at retail by incumbent LECs to residential and business end-users are subject to the section 251(c)(4) discounted resale obligation, without regard to their classification as telephone exchange service or exchange access service. This finding reinforces the resale requirement of the Act by ensuring that resellers are able to acquire advanced services at wholesale rates.¹

In connection with properly raising the issue of the resale of Verizon's advanced services, AT&T made clear that it did *not* ask to revisit the wholesale discount rate. To the contrary, AT&T specifically stated that "[t]he Virginia State Corporation Commission has established that Verizon's retail services are subject to a discount of 21.3%"² Accordingly, Verizon's retail data

¹ Second Report and Order, Deployment of Wireline Service Offering Advanced Telecommunications Capability, CC Docket No. 98-147 (rel. Nov. 11, 1999).

² Petition of AT&T Communications of Virginia, Inc., TCG Virginia, Inc., ACC National Telecom Corp., MediaOne of Virginia, Inc. for Arbitration of an Interconnection Agreement with Verizon Virginia, Inc., CC-00251 (April 23, 2001). at 152, fn. 171, *citing*, AT&T COMMUNICATIONS OF VIRGINIA, INC., For arbitration of unresolved issues from interconnection negotiations with Bell-Atlantic-Virginia, Inc. pursuant to Section 252 of the telecommunications Act of 1996, Case No. PUC960100, Order Resolving Wholesale Discount for Resold Services at 5 (Nov. 8, 1996) and Amending Order (Nov. 13, 1996), at 2 [for the 21.3% number].

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services are subject to a discount of 21.3%.”³ AT&T’s Petition nowhere asserts that the existing VA SCC wholesale discount rate is an unresolved issue that needs to be arbitrated, and in fact, states just the opposite.

Verizon’s Answer also failed to raise the wholesale discount issue. Hence, Verizon’s belated assertion that its current resale discount rate “does not comply with the current state of the law”⁴ is immaterial. Having failed to invoke the Commission’s jurisdiction in the manner required by Section 252(b)(4)(A), Verizon must seek relief, if any, in some other proceeding.

Finally, Verizon’s allegation that the resale discount rate is somehow inherent in the calculation of UNE rates is wholly inaccurate.⁵ While resale obligations certainly are part of an interconnection agreement, as Verizon also asserts, that does not mean that the resale discount rate is in any way related to the calculation of the UNE rates, which are also a part of the interconnection agreement and which have been properly raised as unresolved issues. By Verizon’s logic, a request for arbitration of *any* matter covered in an interconnection agreement would require the Commission to arbitrate *every* matter covered in an interconnection agreement. Nothing in Section 252(b)(4)(A) requires the Commission to follow such an unworkable and burdensome course.

II. Intercarrier Compensation.

As with the resale discount rate, nowhere in AT&T’s petition does it ask that the issue of the reciprocal compensation rate be arbitrated. Likewise, Verizon’s answer fails to raise this as an unresolved issue. Verizon concedes as much, and argues instead that because both its and AT&T’s cost studies included costs for transport and termination of local traffic, the reciprocal compensation rate somehow was raised as an issue to be arbitrated. But cost studies – both Verizon’s and AT&T’s – typically generate numerous inputs and outputs that are not at issue in the proceeding. The Commission is fully capable of resolving the issues actually raised by the parties without making a ruling on the reasonableness of the additional outputs incidentally

³ Petition of AT&T Communications of Virginia, Inc., TCG Virginia, Inc., ACC National Telecom Corp., MediaOne of Virginia, Inc. for Arbitration of an Interconnection Agreement with Verizon Virginia, Inc., CC-00251 (April 23, 2001). at 152.

⁴ Verizon Letter of July 13, 2001 at page 2.

⁵ Verizon 7/13/01 letter at 2 n.2.

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generated by the parties' cost models. Hence, the short answer to Verizon's *ipse dixit* is the same – this issue was not raised either by petition or response, and therefore is not before the Commission.

In conclusion, AT&T respectfully requests that the Commission reject Verizon's attempt to bootstrap these two issues into this proceeding. They have not been raised by any party, and Verizon's belated attempt to resurrect them after it had every opportunity to raise them in a timely manner, but failed to do so, should not be permitted. Likewise, Verizon's entreaty to "clarify the issues in this proceeding" should be rejected for the hollow excuse that it is. In contradistinction to the issues in Verizon's motion to dismiss, which were properly before the Commission, and which the Commission recognized were "the appropriate subject of arbitration" (FCC July 11 letter, page 1), there is nothing with respect to these two issues to clarify.

Sincerely yours,

A handwritten signature in cursive script, reading "David M. Levy". The signature is written in dark ink and is positioned above the printed name.

David M. Levy

cc: Service List

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JUL 20 2001

Before the
Federal Communications Commission
Washington, D.C. 20554

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of
Petition of AT&T Communications
of Virginia, Inc., Pursuant
to Section 252(e)(5) of the
Communications Act, for Preemption
of the Jurisdiction of the Virginia
State Corporation Commission
Regarding Interconnection Disputes
with Verizon-Virginia, Inc.

CC Docket No. 00-251

CERTIFICATE OF SERVICE

I hereby certify that on this 20th day of July, 2001, copies of this letter were sent via hand delivery, overnight delivery or e-mail to:

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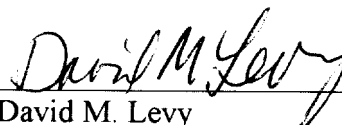
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